

Message Text

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TO USMISSION GENEVA PRIORITY

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USMTN

E.O. 11652: N/A

TAGS: ETRD, MTN

SUBJECT: ASSESSMENT OF OUTSTANDING MTN ISSUES REQUIRING
RESOLUTION

REF: (A) GENEVA 11234, (B) GENEVA 11207, (C) GENEVA 11279

1. WE APPRECIATE MTN DEL VIEWS CONTAINED IN REFTEL A.
WE ARE CURRENTLY EVALUATING WHERE WE STAND IN THE MTN IN
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LIGHT OF THE JULY 13 "FRAMEWORK OF UNDERSTANDING" AND THE
BONN SUMMIT AGREEMENT IN ORDER TO LAY OUT AN INTERNAL WORK
PROGRAM FOR THE REST OF THE SUMMER AND THE FALL. IN THIS
REGARD, WE ARE ATTEMPTING TO IDENTIFY THE KEY OUTSTANDING
ISSUES THAT MUST BE RESOLVED IN THE FALL SO THAT WE CAN
COMPLETE THE NEGOTIATIONS BY DECEMBER 15. WE WOULD
APPRECIATE ANY COMMENTS THAT THE MTN DELEGATION MIGHT HAVE.
OUR INITIAL ASSESSMENT LEADS US TO THE FOLLOWING CON-
CLUSIONS.

2. CUSTOMS VALUATION. ALTHOUGH WE HAVE SUCCEEDED IN REACHING AGREEMENT WITH THE EC ON THE METHODS OF VALUATION AND EXPECT THE NORDICS AND THE JAPANESE TO GO ALONG, THERE ARE THREE TOUGH AREAS THAT REMAIN TO BE NEGOTIATED -- ADJUSTMENTS TO THE PRICE PAID OR PAYABLE, CODE ADMINISTRATION AND DISPUTE SETTLEMENT, AND DEROGATIONS FOR LDC'S (ESPECIALLY WITH REGARD TO COMPUTED VALUE). IN ADDITION TO THESE NEGOTIATING PROBLEMS, WE STILL HAVE TO RESOLVE THE PERPLEXING ISSUE OF HOW TO HANDLE CONVERSION RATES AND OFFERS FOR ASP FOOTWEAR. FINALLY, WE WILL HAVE TO DECIDE WHETHER WE ARE RECEIVING ADEQUATE RECIPROCITY FOR THE ELIMINATION OF ASP AND THE FINAL LIST. WITH REGARD TO CANADA, WE WOULD LIKE CANADA TO ADHERE TO THE CODE BUT NOT ON THE TERMS THEY HAVE BEEN PROPOSING.

3. GOVERNMENT PROCUREMENT. AS WE SEE IT, THE KEY OUTSTANDING ISSUES ON GOVERNMENT PROCUREMENT CAN BE BROKEN DOWN INTO FOUR AREAS. ON EX POST INFORMATION AND THRESHOLD, THE EC COMMISSION AND THE UNITED STATES HAVE AGREED TO COMPROMISE SOLUTIONS (WHICH WE VIEW AS THE ABSOLUTE MINIMUM ACCEPTABLE DOMESTICALLY) AS A PART OF A PACKAGE OF COMPROMISES ON WHICH THE UNITED STATES HAS DELIVERED. IT IS NOW UP TO THE COMMISSION TO SELL THESE SOLUTIONS TO THE LIMITED OFFICIAL USE
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MEMBER STATES OR RUN THE RISK OF UNRAVELING OTHER COMPROMISES MADE BY THE UNITED STATES. THE UNITED STATES IS NOT PREPARED TO MAKE ANY ADDITIONAL COMPROMISES ON TRANSPARENCY OR THRESHOLD. AS FOR THE CONTINUED JAPANESE UNWILLINGNESS TO AGREE TO THE US-EC COMPROMISES IN THE SINGLE TENDERING, OVERALL TENDERING, AND INFORMATION SECTIONS OF THE CODE, WE WILL HAVE TO CONTINUE TO MAINTAIN PRESSURE ON JAPAN IN THE FALL. THE WHOLE AREA OF CODE COVERAGE, INCLUDING ENTITIES, THRESHOLD LEVELS, AND POSSIBLE PRODUCT EXCLUSIONS WILL REQUIRE RESOLUTION IN THE FALL. FINALLY, AS TO WHAT TYPE OF SPECIAL AND DIFFERENTIAL TREATMENT THERE SHOULD BE, THE DEVELOPING COUNTRIES CONTINUE TO SEEK MORE THAN DEVELOPED COUNTRIES ARE WILLING TO GIVE.

4. STANDARDS. PARTICIPATION IN REGIONAL CERTIFICATION ARRANGEMENTS CONTINUES TO BE THE KEY U.S. ISSUE. OPPOSING U.S. AND EC VIEWS REMAIN IN BRACKETS AND NO PROGRESS HAS BEEN MADE ON THIS QUESTION, WHICH MOTIVATED THE UNITED STATES TO INITIATE THE DRAFTING OF A CODE AND WHICH MUST BE SETTLED SATISFACTORILY IF WE ARE TO ACHIEVE OUR PRIMARY OBJECTIVE AND GENERATE PUBLIC SUPPORT. OTHER OUTSTANDING ISSUES ARE THE EC PROPOSAL ON LEVELS OF OBLIGATION, AND

DISPUTE
SETTLEMENT PROVISIONS. THESE THREE ISSUES ARE INTERRELATED AND THE LEVELS OF OBLIGATION AND DISPUTE SETTLEMENT ISSUES

SHOULD NOT BE RESOLVED PRIOR TO RESOLUTION OF THE REGIONAL CERTIFICATION ISSUE. WE ALSO WISH TO ENSURE THAT THERE BE A LIST OF REASONS WHY INTERNATIONAL STANDARDS WOULD BE INAPPROPRIATE UNDER SECTION 2(B) OF THE CODE. IN ORDER TO RESOLVE ANY OF THESE ISSUES, THE EC MUST CLEARLY DESIGNATE SOMEONE WHO HAS THE AUTHORITY TO NEGOTIATE FOR THE COMMUNITY ON ALL STANDARDS QUESTIONS. WE ASSUME THAT THE CODE WILL APPLY TO AGRICULTURE. HOWEVER, WE NEED A POSITIVE STATEMENT FROM THE EC THAT THEY WILL APPLY THE CODE TO

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AGRICULTURE.

5. SUBSIDIES/COUNTERVAILING DUTIES. ALTHOUGH WE FINALLY HAVE A DRAFT TEXT FROM WHICH TO NEGOTIATE, THREE KEY ISSUES REQUIRE RESOLUTION: THE EXTENT OF THE CODE'S AGRICULTURAL COVERAGE AND DISCIPLINE ON SUBSIDIZED AGRICULTURAL EXPORTS TO THIRD COUNTRY MARKETS, INDICATIVE GUIDELINES FOR DOMESTIC SUBSIDIES, AND THE USE OF PROVISIONAL MEASURES ON THE ARTICLE XVI -XXIII TRACK. OTHER ISSUES THAT REQUIRE RESOLUTION INCLUDE THE LIST OF EXPORT SUBSIDIES (INCLUDING DISC AND EUROPEAN TAX HAVEN ISSUES); THE DEFINITION OF EXPORT SUBSIDY; THE DUEL PRICING CRITERION; CONDITIONAL MFN; SPECIAL AND DIFFERENTIAL TREATMENT; DISPUTE SETTLEMENT; AND HOW TO HANDLE NON-MARKET ECONOMY COUNTRIES.

6. LICENSING. WE BELIEVE THAT, FROM THE U.S. POINT OF VIEW, THERE IS ONE KEY ISSUE. CAN COUNTRIES AGREE TO ELIMINATE AUTOMATIC LICENSING EXCEPT IN SPECIAL CASES (I.E., FOR SURVEILLANCE PURPOSES RELATING TO SAFEGUARD, ANTIDUMPING, OR BALANCE OF PAYMENTS ACTIONS)? WE ARE MOST INTERESTED IN LDC ADHERENCE TO ANY CODE(S) OF CONDUCT IN THIS AREA AND WOULD CREDIT ANY LDC IN THE MTN FOR SUCH ADHERENCE.

7. CONDITIONAL MFN. A GENERAL UNRESOLVED ISSUE IN SEVERAL OF THE CODES IS THE TREATMENT OF NON-SIGNATORIES UNDER THE CODES.

8. TRADE IN COUNTERFEIT GOODS. NOW THAT THERE HAS BEEN BROAD AGREEMENT TO STRENGTHEN RULES AND PROCEDURES TO DEAL WITH TRADE IN COUNTERFEITED GOODS, WE WILL HAVE TO DEVELOP A DETAILED TEXT OF AN AGREEMENT THAT CAN BE
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INCORPORATED INTO THE FINAL MTN PACKAGE.

9. NONTARIFF MEASURES NOT DEALT WITH MULTILATERALLY (NTMNDWM). THE UNITED STATES HAS RECENTLY BEEN VERY FORTHCOMING ON TWO NTMNDWM'S OF GREAT IMPORTANCE TO OUR NEGOTIATING PARTNERS, THAT IS, ON THE WINE GALLON/PROOF GALLON ISSUE AND ON THE ISSUE OF THE 50 PERCENT DUTY ON AIRCRAFT REPAIRS. WE EXPECT OUR NEGOTIATING PARTNERS TO BE EQUALLY FORTHCOMING IN MAKING CONCESSIONS ON THE CONDITIONS ATTACHED TO OUR OFFERS ON THESE ITEMS AND ON OUR SPECIFIC NTM REQUESTS, SUCH AS ITALIAN PATENT PROTECTION FOR PHARMACEUTICALS, MODIFICATION OF CANADIAN PLYWOOD STANDARDS, QRS IN LEATHER IN JAPAN, AND FRENCH ADVERTISING RESTRICTIONS ON DISTILLED SPIRITS.

10. RULES OF ORIGIN. THE MAIN SHORT-TERM ISSUES RELATE

TO POSSIBLE CHANGES IN THE EC/EFTA RULES OF ORIGIN TO ALLEVIATE PRESENT U.S. TRADE PROBLEMS IN INDIVIDUAL SECTORS. AN ALTERNATIVE TO THE TWO STAGE TRANSFORMATION RULE IN TEXTILES MUST BE FOUND -- EITHER ACROSS-THE-BOARD OR FOR GROUPS OF PRODUCTS; THE EC'S PROPOSAL FOR CCN CHAPTERS 84-92 MUST BE AGREED IN PRESENT OR MODIFIED FORM; AND AGREEMENT SHOULD BE REACHED ON RULE CHANGES FOR PARTICULAR PRODUCTS IN OTHER AREAS(ESSENTIALLY CHEMICAL). FOR THE LONGER-TERM, WE WILL HAVE TO DECIDE WHETHER AND HOW TO PUSH FOR BROADER SOLUTIONS TO ORIGIN RULE PROBLEMS IN GENERAL.

11. INDUSTRIAL TARIFFS. SEE SEPTTEL RESPONDING TO REFTTEL B.

12. AIRCRAFT. SEE SEPTTEL RESPONDING TO REFTTEL C.

13. STEEL. NOW THAT THERE HAS BEEN GENERAL AGREEMENT TO ESTABLISH A STEEL COMMITTEE IN THE OECD, THE KEY ISSUE LIMITED OFFICIAL USE
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IN THE STEEL AREA IS THE EXTENT TO WHICH TARIFF CUTS ON STEEL WILL BE MADE IN THE MTN.

14. SAFEGUARDS. ACCEPTANCE OF UNILATERAL SELECTIVITY REMAINS THE KEY ISSUE FOR THE EC AND THE NORDICS. THIS IS ALSO PROBABLY THE SINGLE MOST IMPORTANT ISSUE IN THE MTN TO LDCS. THIS PLUS COVERAGE (EXPORT RESTRAINTS, INTER-INDUSTRY AGREEMENTS AND RESIDUAL QUANTITATIVE RESTRICTIONS, DOMESTIC PROCEDURE,AND EFFECTIVE SURVEILLANCE AND DISPUTE SETTLEMENT PROCEDURES REMAIN THE KEY ISSUES FOR THE UNITED STATES. IF THESE QUESTIONS ARE RESOLVED, THE OTHER PROVISIONS OF THE CODE SHOULD FALL INTO PLACE. APPLICATION OF THE CODE TO SEASONAL AGRICULTURAL TRADE IS A SPECIAL PROBLEM THAT CANADA INSISTS ON HAVING SORTED

OUT. THE AGREEMENT BY THE EC AND OTHERS TO ELIMINATE THEIR RESTRICTIONS, WHICH MAKE RECOURSE TO SAFEGUARD PROVISIONS UNNECESSARY, WILL DETERMINE WHETHER SECTION 204 OF THE AGRICULTURAL ACT OF 1954 IS SUBJECT TO THE CODE.

15. FRAMEWORK. DURING THE FIRST TWO WEEKS OF JULY, THERE EMERGED NEGOTIATING DOCUMENTS ON ALL FRAMEWORK TOPICS WHICH MAY PROVIDE THE BASIS FOR THE FINAL NEGOTIATION OF MUTUALLY ACCEPTABLE SOLUTIONS. ON THE ENABLING CLAUSE/RECIPROCITY/GRADUATION ISSUE, ALL DEVELOPED COUNTRIES HAVE AGREED TO A DRAFT TEXT. LDCS HAVE NOT ENDORSED THIS TEXT, HOWEVER, AND HAVE EXPRESSED PARTICULAR DISSATISFACTION WITH THE LANGUAGE ON GRADUATION. AS FOR DISPUTE SETTLEMENT, THERE IS BROAD CONSENSUS, EXCEPT FOR THE EC, TO USE THE CURRENT NEGOTIATING TEXT AS A BASIS FOR FINAL AGREEMENT. FINAL AGREEMENT IN THIS AREA WILL HAVE TO

BRIDGE THE GAP BETWEEN THE EC, WHICH IS LOOKING FOR A LESS RIGID, LESS ELABORATE DISPUTE SETTLEMENT MECHANISM, AND LIMITED OFFICIAL USE
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THOSE LOOKING FOR A MORE COMPREHENSIVE MECHANISM (THE UNITED STATES AND OTHERS). WITH REGARD TO THE CURRENT BALANCE OF PAYMENTS TEXT, THE EC CONTINUES TO RESIST LANGUAGE THAT WOULD INCLUDE A DEVELOPED COUNTRY PLEDGE TO AVOID THE USE OF TRADE MEASURES FOR BALANCE OF PAYMENTS PURPOSES WHILE THE JAPANESE WOULD LIKE A STRONG COMMITMENT TO AVOID SUCH MEASURES. WE COULD GIVE IN TO THE EC ON THIS POINT. THE EC, JAPAN, AND OTHERS MAY REMAIN RELUCTANT TO ACCEPT THE U.S. PROPOSAL TO RECOGNIZE AND REVIEW WITHIN THE GATT BOP MEASURES OTHER THAN QRS (E.G. SURCHARGES AND IMPORT DEPOSITS) IN FEAR THAT SUCH MEASURES WOULD THEREFORE BE "LEGALIZED." HOWEVER, THE U.S. SHOULD CONTINUE TO SUPPORT THIS POINT, WHICH IS INCLUDED IN THE LATEST DRAFT. IN ADDITION, LDCS SEEK GREATER FLEXIBILITY UNDER ARTICLE XVIII FOR THEIR ACTIONS NOT ONLY FOR BOP REASONS BUT ALSO FOR ECONOMIC DEVELOPMENT PURPOSES. FINALLY, ALL DEVELOPED COUNTRIES HAVE NOW ACCEPTED THE CURRENT DRAFT ON EXPORT CONTROLS, PART OF WHICH COMPRISES THE BASIS FOR AGREEMENT AND PART THE BASIS FOR FURTHER NEGOTIATION. PROGRESS TO BE MADE ON THE LATTER PART NEEDS TO BE CLARIFIED. A MAJOR ISSUE TO BE RESOLVED IS THE DEGREE TO WHICH LDC'S WILL BE SUBJECT TO THE DISCIPLINE OF THE AGREEMENT. THE LDC'S SEEK SPECIAL TREATMENT UNDER THE AGREEMENT THAT WOULD, IN ESSENCE, ALLOW THEIR COMPLETE FREEDOM OF ACTION WITH REGARD TO EXPORT CONTROLS.

16. GENERAL UNDERSTANDING ON AGRICULTURE. IN THE "FRAMEWORK OF UNDERSTANDING" KEY DC DELEGATIONS AGREED TO ESTABLISH A FUNDAMENTAL UNDERSTANDING ON THE CONDUCT OF AGRICULTURAL TRADE BUILT ON PRINCIPLES LEADING TO AN

IMPROVED LEVEL OF INTERNATIONAL COOPERATION. THE EXACT NATURE OF THIS UNDERSTANDING AND ITS IMPLEMENTATION REMAINS TO BE NEGOTIATED, ALTHOUGH GUNDELACH HAS ENDORSED THE U.S. DRAFT (RECEIVED IN GENEVA) IN PRINCIPLE.

17. AGRICULTURAL EXPORT SUBSIDIES. KEY DC PARTICIPANTS
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IN THE MTN HAVE REAFFIRMED THEIR COMMITMENT TO ARTICLE XVI:3 AND HAVE COMMITTED THEMSELVES TO REACHING A COMMON UNDERSTANDING IN ORDER TO AVOID DISTORTIONS OF TRADE IN TRADITIONAL MARKETS THROUGH THE USE OF SUBSIDIES. THE DETAILS OF THIS UNDERSTANDING, INCLUDING DEFINITIONS FOR "TRADITIONAL MARKET" AND "REPRESENTATIVE PERIOD", MUST STILL BE WORKED OUT.

18. WHEAT. THE FOLLOWING ISSUES HAVE YET TO BE RESOLVED IN THE WHEAT AGREEMENT, WHICH IS BEING NEGOTIATED SEPARATELY FROM THE MTN: RESERVE SIZE AND SHARES; LEVELS

OF PRICE ACTION POINTS; THE DEFINITION OF NOTIONAL PRICES; SUPPLY ASSURANCES; ACTION AT THE THIRD RISING AND FALLING PRICE POINTS; RELIEF OF OBLIGATIONS; ASSISTANCE TO DEVELOPING COUNTRIES; AND DISCIPLINE ON EXPORT SUBSIDIES.

19. COARSE GRAINS. A DRAFT CONSULTATIVE COARSE GRAINS AGREEMENT HAS BEEN SUBSTANTIALLY AGREED WITH THE EXCEPTION OF THE ARTICLE ON CONSULTATIONS. THE KEY ISSUES INCLUDE WHETHER THE EC WILL CONTINUE TO PRESS FOR SPECIFIC PRICE LEVELS AS THE MEANS FOR TRIGGERING CONSULTATIONS AND WHETHER THE EC WILL BE SATISFIED WITH A PURELY CONSULTATIVE ARRANGEMENT.

20. DAIRY. AN INTERNATIONAL DAIRY AGREEMENT IS ESSENTIALLY COMPLETE EXCEPT FOR THE CHEESE PROTOCOL QUESTION AND THE ISSUE OF THE GATT LEGAL STATUS OF THE AGREEMENT.

21. MEAT. THE TEXT FOR AN INTERNATIONAL MEAT ARRANGEMENT IS ESSENTIALLY COMPLETE, WITH THE MAJOR EXCEPTIONS BEING HOW TO HANDLE STANDARDS, EXPORT SUBSIDIES, AND "CON-
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CERTED DISCIPLINES" ON MEAT. U.S. BEEF REQUESTS TO JAPAN AND THE EC HAVE NOT MET WITH SATISFACTORY RESPONSE AND THUS REMAIN OUTSTANDING.

22. BILATERAL REQUESTS/OFFERS ON AGRICULTURE. VERY LITTLE

PROGRESS HAS BEEN MADE IN THIS AREA AND FINAL COUNTRY SETTLEMENTS REMAIN TO BE WORKED OUT. MORE IMPORTANTLY, PRIORITY U.S. REQUESTS ARE DIRECTED MAINLY AT DEVELOPED COUNTRIES AND HAVE NOT BEEN MET WHEREAS THE MOST SENSITIVE U.S. OFFERS ARE PRIMARILY FOR DEVELOPING COUNTRIES. THEREFORE, A VIABLE PACKAGE REQUIRES THAT U.S. OFFERS ON COMMODITIES TO LDCS BE COMPENSATED BY OFFERS ON THOSE COMMODITIES FROM DCS OF INTEREST TO U.S. EXPORTERS IN A MANNER THAT IS SATISFACTORY TO THE AFFECTED DOMESTIC CONSTITUENCIES.

23. DEVELOPING COUNTRIES. WE HAVE ACHIEVED A BREAK-THROUGH IN PRINCIPLE WITH THE LDCS SINCE WE HAVE OFFERS FROM MANY OF THE MOST IMPORTANT. HOWEVER, THEIR LEVEL OF CONTRIBUTIONS IS INADEQUATE AND WE HAVE A LONG WAY TO GO TO REACH ACCEPTABLE AGREEMENTS. IN ORDER TO ACHIEVE BROAD ADHERENCE BY LDCS TO THE CODES, WE WILL NEED TO CONSULT MAJOR LDCS MORE CLOSELY ON KEY CODE ISSUES, PARTICULARLY BUT NOT EXCLUSIVELY ON S AND D. VANCE

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